Panelists

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The Art of Persuasion: What Role Gender?

• How do jurors view male and female attorneys?
  • Who do they find to be most clear?
  • Who do they find to be most honest and likeable?
  • Who do they find to be most persuasive?
  • With whom do they most identify?

• How does a juror’s gender influence perception of attorney effectiveness?

• Does attorney gender have power to influence the ultimate outcome?
  • What about juror gender?
The Art of Persuasion: What Role Gender?

- How effective is anger in the courtroom?
  - Does it vary by attorney gender?
- What about other emotions, such as passion or empathy?
- What is the impact of having a woman at counsel table?
  - Does her role matter?
- Are there strategies in the courtroom that are effective for attorneys of one gender but not the other?
- What can we do to harness the full power to persuade in the courtroom?
Context for Discussion

• Snapshot of women in the legal profession
  • Since the early 1990s, women have made up roughly half of law school graduates
  • Women still lag well behind men in equity partnership, law firm governance, and other leadership roles in the profession
  • According to one recent study, no more than a third of all attorneys appearing in both criminal and civil cases are women
    • In criminal cases, majority of female lead counsel are government prosecutors
• What accounts for the persistent achievement gap?
  • “Pipeline” theory
  • “Opt-out” theory
  • Influence of embedded gender stereotypes and associations
The Juror Survey *

- 880 mock jurors from metropolitan areas nationwide
  - 473 men
  - 407 women
- Two survey components
  - The IAT (Implicit Association Test) measuring implicit bias (n=616)
  - The Attorney Opening/Ratings (n=880)

* Research conducted by DOAR. Cite as:
For further information, please contact Dr. Ellen Brickman: ebrickman@doar.com
The IAT

- Designed to measure implicit bias (automatic preferences)
- Respondent simultaneously sorts items into two categories
  - Male attorney or female attorney (pictures)
  - Positive or negative (words)
- Sorting speed reflects strength of association between male/positive-female/negative and vice versa
- Difference between sorting speeds (latency) signals a bias
IAT Results

- Men have automatic preference for men; women have automatic preference for women
  - Women’s preference is much stronger
Case Scenario: The Attorney’s Opening

• 2-page defense opening in white-collar case
• Half read opening by Mr. Patrick Curvell, half by Ms. Patricia Curvell; openings were otherwise identical
• Jurors rated opening on attributes:
  • Strong
  • Assertive
  • Angry
  • Emotional
  • Argumentative
  • Logical
  • Passionate
  • Clear
  • Engaging
  • Friendly
  • Fact-based
  • Caring
  • Amount of personal info re client
  • How much attorney cares about client
  • Closeness of relationship with client
  • Persuasive
  • Effective
  • Likelihood of conviction
Overall, survey participants viewed male and female attorneys as largely comparable.

Despite identical opening, some small but statistically significant differences in rankings:
- Opening by female attorney perceived as angrier
- Opening by male attorney perceived as friendlier, more persuasive, and more effective
  - Closer look at persuasiveness was illuminating

Perceived differences did not translate into greater likelihood of conviction.
Ratings of Attorney’s Opening: Research Findings by Gender of Juror

- On several important attributes, male and female jurors each rated attorney of their own gender more positively than attorney of the other gender:
  - Logical
  - Clear
  - Cares about client

- Male jurors rated opening by female attorney to be less persuasive than opening by male
  - Female jurors viewed openings by male and female attorneys to be equally persuasive
Ratings of Attorney’s Opening: Research Findings by Gender of Juror
Do Different Attributes Make Male and Female Attorneys Persuasive and Effective?

• Largely, no. Most of the same attributes were associated with persuasiveness and effectiveness for both the male and female attorney.

• One principal difference:
  • For the male attorney, but not for female attorney, greater emotionality was associated with greater persuasiveness and effectiveness.
Implicit bias was activated only in response to reading an opening by a female attorney.

When female attorney presented the opening, a juror’s automatic preference for men was associated with lower ratings of the opening on several scales:

- Strength, assertiveness, passion, caring about client, persuasiveness.

When male attorney presented the opening, no relationship between IAT score and ratings of the opening.
• Gender bias exists, but is not extreme
• Men have implicit bias favoring male attorneys, women have even stronger bias favoring females
• The biggest challenge: Addressing male jurors’ perceptions of female attorneys
Lawyers report experiencing far less gender bias from jurors than from other participants in the courtroom.

Male attorneys report fewer gender-based influences in the courtroom than do females.

Majority of female respondents to the attorney survey reported experiencing negative reactions from colleagues, opposing counsel, and clients because of their gender.

### Attorney Survey: Top-Line Quantitative Findings

<table>
<thead>
<tr>
<th>Reported Negative Responses from . . .</th>
<th>Female Attorneys</th>
<th>Male Attorneys</th>
</tr>
</thead>
<tbody>
<tr>
<td>Jurors</td>
<td>22%</td>
<td>5%</td>
</tr>
<tr>
<td>Judges</td>
<td>43%</td>
<td>11%</td>
</tr>
<tr>
<td>Colleagues</td>
<td>72%</td>
<td>16%</td>
</tr>
<tr>
<td>Opposing Counsel</td>
<td>69%</td>
<td>13%</td>
</tr>
<tr>
<td>Clients</td>
<td>63%</td>
<td>11%</td>
</tr>
</tbody>
</table>
Attorney Survey: Top-Line Quantitative Findings

• Female attorneys are more sensitive to potential gender-biased expectations from jurors
• Specifically, female attorneys believe that:
  • Jurors expect male attorneys to be more assertive, stronger, angrier, and more logical
  • Jurors expect female attorneys to be more emotional, friendly, caring, and passionate
• Key Observations from Attorney Survey Responses
  • Female attorneys valued for counseling role / qualities of compassion and reassurance / “calmer presence” in the courtroom
  • Array of comments regarding condescending or sexist remarks to female attorneys
  • Negative juror reaction to condescending treatment toward women
  • Focus on women’s attire and appearance
  • Using feminine attributes for effect
Strategic Implications and Takeaways

- Jury selection
- Strategy and tactics at trial
- Perceptions in the courtroom
  - Trial counsel
  - Individual jurors
- Use of emotion
- Diversity of trial team and role of women
- Harnessing full persuasive power